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OFFICE OF PETITIONS
DECISION ON PETITION

In re Application of
Kenneth Gould, Joo Chung,
Michael Sun and Frank Huang
Application No. 09/752,744
Filed: December 29, 2000
Attorney Docket No. 2585-007
Title: System and Method for
Multicast Stream Failure

This is a decision on the renewed petition filed November 14, 2002, under 37 CFR 1.137(b), to revive the above-identified application; and the petition filed November 14, 2002, under 37 CFR 1.47(a), to accept a declaration without the signatures of all the joint inventors.

The petition under 1.47 is **DISMISSED**.

Any request for reconsideration of this decision must be submitted within **TWO (2) MONTHS** from the mail date of this decision. Extensions of time under 37 CFR 1.136(a) are permitted. The reconsideration request should include a cover letter entitled "Renewed Petition under 37 CFR 1.47."

A decision on the petition under 1.137(b) is being held in abeyance pending satisfaction of the requirements under 1.47.

The above-identified application became abandoned for failure to reply to the Notice to File Missing Parts of Application mailed February 15, 2001. The Notice set a period for reply of two (2) months from the mail date of the Notice, with extensions of time obtainable under 37 CFR 1.136(a). No reply having been timely received and no extensions of time obtained, the above-identified application became abandoned on April 16, 2001. The initial petition filed June 10, 2002, was dismissed for failure to submit the required reply to the Notice to File Missing Parts of Application. The reply filed on petition did not include an acceptable declaration, the late surcharge or new drawings.

On instant renewed petition, petitioner authorized payment of the late surcharge and submitted a new declaration executed by joint

¹A grantable petition pursuant to 37 CFR 1.137(b) must be accompanied by (1) the reply required to the outstanding Office action or notice, unless previously filed; (2) the petition fee as set forth in 37 CFR 1.17(m); (3) a statement that the **entire** delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional. The Commissioner may require additional information where there is a question whether the delay was unintentional; and (4) any terminal disclaimer (and fee as set forth in § 1.20(d)) required pursuant to 37 CFR 1.137(d).

inventor Gould on behalf of himself and on behalf of non-signing inventors Chung, Sun and Huang. However, this declaration is not acceptable. 35 U.S.C. 115 provides, in pertinent part, that:

The applicant shall make oath² that he believes himself to be the original and first inventor of the process, machine, manufacture, or composition of matter, or improvement thereof, for which he solicits a patent; and shall state of what country he is a citizen.

The declaration provided does not include the citizenship of any of the joint inventors. This statutory requirement cannot be waived. Accordingly, a new executed declaration in compliance with § 1.47 properly setting forth each of the inventor's citizenships is required (or a declaration executed by all of the inventors properly setting forth each of the inventor's citizenships).

In addition, it does not appear that petitioner has provided substitute drawings in compliance with § 1.84 as required by the Notice mailed February 15, 2001. No new drawings are of record in this application.

Thus, on request for reconsideration under § 1.47 and § 1.137(b), petitioner must submit both an acceptable declaration and substitute drawings in compliance with § 1.84.

Further correspondence with respect to this matter should be addressed as follows:

By mail: Commissioner for Patents
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Telephone inquiries related to this decision may be directed to Petitions Attorney Nancy Johnson at (703) 305-0309.



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² 35 U.S.C. 25 Declaration in lieu of oath.